

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD



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August 27, 2004

Innovative Communications Corporation
P.O. Box 6100
St. Thomas, VI 00801-6100

United Steelworkers of America,
Local 8713, AFL-CIO-CLC
VI Taxi Association Bldg.
Estate Contant #68
St. Thomas, VI 00802

Re: Innovative Communications
Corporation
Case 24-CA-9882

Gentlemen:

The Region has carefully considered the charge filed against Innovative Communications Corporation, alleging it violated the National Labor Relations Act. As explained below, I have decided that further proceedings on that charge should be handled in accordance with the Board's deferral policy.

Deferral Policy: Under the Board's deferral policy as set forth in *Collyer Insulated Wire*, 192 NLRB 837 (1971) and *United Technologies Corp.*, 268 NLRB

557 (1984), this Agency will withhold making a final determination on certain arguably meritorious unfair labor practice charges when a grievance involving the same issue can be processed under the grievance/arbitration provisions of the applicable contract. This policy is based, in part, on the preference that the parties should resolve certain issues through their contractual grievance procedure in order to achieve a prompt, fair and effective settlement of their dispute. Therefore, if an employer agrees to waive contractual time limits and process the related grievance through arbitration if necessary, the Regional office will defer the charge. However, this policy requires that a charge be dismissed if the charging party thereafter fails to promptly file and attempt to process a grievance on the subject matter of the charge.

Decision to Defer: Based on our investigation, I am deferring further proceedings on the charge to the grievance/arbitration process for the following reasons:

1. The charge raises the following issue: That during the six month period preceding June 7, 2004, the Employer, in violation of Section 8(a)(1) and (3) of the Act, has filled positions and/or assigned work to contract employees, that employees on layoff had been holding and/or performing prior to the strike, and that the Employer engaged in such conduct to avoid recalling employees who were not allowed to return to work after the strike ended.
2. The Employer and the Union have a collective-bargaining agreement currently in effect that provides for final and binding arbitration.
3. The Employer has agreed to waive any time limitations in order to allow the arbitrator to address the merit of the dispute.
4. Since it appears that the above allegations in the charge are covered by among others, Articles I, III, XVI and XVII of the extant collective-bargaining agreement, it is likely that the allegations may be resolved through the grievance/arbitration procedure.

Further Processing of the Charge: As explained below, while the charge is deferred, the Region will monitor the processing of the grievance and under certain circumstances will resume processing the charge.

Charging Party's Obligation: Under the Board's Collyer deferral policy, the Charging Party has an affirmative obligation to file a grievance, if a grievance has not already been filed. If the Charging Party fails either to promptly file or submit the grievance to the grievance/arbitration process, or declines to have the grievance arbitrated if it is not resolved, I will dismiss the charge.

Union/Employer Conduct: If the Union or Employer fails to promptly process the grievance under the grievance/arbitration process; declines to arbitrate the grievance if it is not resolved; or if a conflict develops between the interests of the Union and Charging Party, I may revoke deferral and resume processing of the charge.

Charged Party's Conduct: If the Charged Party prevents or impedes resolution of the grievance, raises a defense that the grievance is untimely filed or refuses to arbitrate the grievance, I will revoke deferral and resume processing of the charge.

Inquiries and Requests for Further Processing: Approximately every 90 days, the Regional Office will ask the parties about the status of this dispute to determine if the dispute has been resolved and whether continued deferral is appropriate. However, I will accept and consider at any time requests and supporting evidence submitted by any party to this matter for dismissal of the charge, for continued deferral of the charge, or for issuance of a complaint.

Notice to Arbitrator Form: If the grievance is submitted to an arbitrator, please sign and submit to the arbitrator the enclosed "Notice to Arbitrator" form to ensure that the Region receives a copy of an arbitration award when the award is sent to the parties.

Review of Arbitrator's Award: If the grievance is arbitrated, the Charging Party may request this office to review the arbitrator's award. The request must be in writing and addressed to me. The request should analyze whether the arbitration process was fair and regular, whether the unfair labor practice allegations in the charge were considered and decided by the arbitrator, and whether the award is consistent with the Act. Further guidance on the nature of this review is provided in *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955), and *Olin Corp.*, 268 NLRB 573 (1984).

Charging Party's Right to Appeal: The National Labor Relations Board Rules and Regulations permit Charging Party to obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board. If the Charging Party wishes to file an appeal, please note the following:

Appeal Due Date: The appeal must be received by the General Counsel in Washington, DC by the close of business at **5:00 p.m. (EST or EDT, as appropriate) on September 10, 2004.** However, if the appeal is mailed, it will be considered timely if it is postmarked no later than one day before the due date. The appeal may not be filed by facsimile transmission.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant an extension of time to file the appeal. A request for an extension of time may be made by facsimile transmission or through

the Internet. The fax number is (202) 273-4283. Special instructions for requesting an extension of time over the Internet are set forth in the attached Access Code Certificate. Any request for an extension of time must be received no later than the appeal due date indicated above. Unless filed through the Internet, a copy of any request for extension of time should be sent to me.

Appeal Contents: The appeal must contain a complete statement setting forth the facts and the reasons why the Charging Party is appealing this decision.

Address for Appeal: The appeal should be sent to the General Counsel of the National Labor Relations Board, Office of Appeals, 1099 – 14th Street, N.W., Washington, D.C. 20570. A copy of the appeal should be sent to me.

Notice to Other Parties of Appeal: The Charging Party must notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the General Counsel, please complete the enclosed Notice of Appeal Form (NLRB-4767) and send one copy of the form to all parties and representatives whose names and addresses are set forth in this letter. The appeal itself should not be sent to the other party(ies). Mailing the notice form to the parties does not relieve Charging Party from filing the appeal itself with the General Counsel and sending a copy of the appeal to me by the due date.

Very truly yours,

Marta M. Figueroa
Regional Director

Enclosures

CC: Office of Appeals, NLRB, Washington DC 20570

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